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STUDENT ESSAY

# Nongovernmental Organizations: Advocates of Adolescents' Sexual and Reproductive Health Rights in Kenya

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## Abstract

Through a one-country case study, this essay analyzes nongovernmental organizations' (NGOs) institutional work, ranging from legal to grassroots actions, to enforce adolescents' sexual and reproductive health rights in Kenya. Within the rapidly shifting landscape in international aid and despite the difficulties of achieving internationally agreed rights and Sustainable Development Goals, NGOs continue to position themselves as key advocates for adolescents' rights. NGOs' multilevel institutional work has three main roles: legal advocacy and litigation, evidence generation and policy monitoring, and rights awareness-raising. This Kenyan analysis highlights NGOs' actions, successes, and challenges in advocating for adolescents' sexual and reproductive rights, providing valuable insights for similar settings within the region.

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## Introduction

Adolescents and youth make up 25% of the global population, most of whom live in low- and middle-income countries.[1] Keeping youth safe and healthy is an urgent priority that includes ensuring the attainment of their sexual and reproductive health rights (SRHR), as reflected in target 3.7 of the Sustainable Development Goals on universal access to sexual and reproductive healthcare services.[2]

Substantial progress has been made in adolescents' SRHR in the last few decades, but significant gaps remain. Issues such as harmful practices, sexual and gender-based violence, and pervasive social norms hinder the progress in many low- and middle-income countries, including Kenya.[3] The last Kenya Demographic and Health Survey showed that female genital mutilation (FGM), a practice performed during childhood, has a prevalence of 15% among women aged 15 to 49, increasing to 56.3% among women without formal education.[4] Fifteen percent of adolescent women were or had already been pregnant, and 34.5% of unmarried women aged 15-19 years had unmet need for family planning, leading to mistimed pregnancies and unsafe abortions.[5]

Both formal and informal norms play a role in the attainment of human rights. Many sub-Saharan African countries present complex and contradictory laws, policies, and strategies relating to adolescents' sexual and reproductive health (SRH), creating barriers to the realization of these SRHR.[6] In contrast, Kenya has developed progressive adolescents' SRH policies.[7] However, the informal norms around SRH present challenges in Kenya that reflect the reality common in low- and middle-income countries.[8] The influence of the community and cultural norms on adolescents' lived realities is substantial.

In a field with many actors, strategies, and agendas, nongovernmental organizations (NGOs) play a key role as advocates for adolescents' SRHR. Their institutional work addresses many levels in society, from national government forums through to rural communities. This essay aims to illustrate the range of NGOs' advocacy work in Kenya, especially at a time when international aid is facing major challenges.[9] Using this one-country case study, the essay highlights the successes and challenges of NGOs advocating for adolescents' SRHR in Kenya, and is relevant to other countries in the sub-Saharan region.[10]

## Adolescents' right to sexual and reproductive health

### *International law in Kenya*

The International Covenant on Economic, Social and Cultural Rights (ICESCR) laid the foundational "right to the highest attainable standard of health" in article 12 in 1966, and in 2016, General Comment No. 22 expanded on SRH.[11]

Following ICESCR, treaties such as the Convention on the Elimination of Discrimination Against Women (CEDAW) (1979), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol, 2003), the UN Convention on the Rights of the Child (1989) and the African Charter on the Rights and Welfare of the Child (1990) have protected the right to health of youth.[12] Kenya has ratified each of those treaties and has, therefore, obligations to fulfill adolescents' rights.[13]

As Kenya uses the monist approach to international law, all ratified international treaties and conventions become automatically part of Kenyan law, without the need for separate domestic legislation.[14] Consequently, all the abovementioned international treaties are enforceable in Kenyan courts.[15] Judges can cite and rely on those treaties and NGOs can invoke international law to challenge laws or policies that contradict those international obligations. Conclusions or declarations of the committees appointed to monitor implementation of these treaties can, as soft law, guide interpretation in court. Although not binding, conclusions are commonly used by pro-rights actors within the legal and judicial context to press the Kenyan state to comply with its international obligations.[16]

### *The legal and judicial national context*

International obligations have been partially reflected in the Kenyan 2010 Constitution. Article

43 on the right to the highest attainable standard of health, including SRH, is stated in ICESCR and is the foundation for individuals' rights to health.[17] Article 26 in the constitution on the right to life from conception, and section (4) on abortion are significant when reflecting on women's SRHR.[18] Article 26 creates a general prohibition against abortion but recognizes grounds for exemption if "in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger." This article, subject to much controversy, (partially) supports women's reproductive health rights when permitting abortion in case of mental or physical danger for the woman.

In addition, article 55 on the rights of youth and article 53 on the rights of the child specifically protect adolescents' rights. Finally, article 27 on the right to equality and nondiscrimination is key to protecting vulnerable groups, such as teenage girls, and is used in that regard by pro-rights actors in court.

These articles in the Kenyan Constitution lay the foundation for Kenyan SRH legislation, policies, and guidelines. A major formal achievement is *The Prohibition of FGM Act*, a national agreement on the eradication of this harmful practice.[19] Other national and legally relevant elements include the Sexual Offences Act No. 3 (2006), the Sexual Offences (Medical Treatment) Regulations of 2012 and the National Guidelines on Management of Sexual Violence (2014).[20] These laws establish the provision of free medical treatment for victims of sexual offenses and the right to terminate a pregnancy if it is a result of rape but their interpretation by judges has been proven problematic.[21]

However, there are also laws posing barriers to the fulfillment of SRHR. The Kenyan Penal Code criminalizes the procurement of unsafe abortion under sections 158 to 160.[22] Although section 240 allows trained health professionals to provide safe abortion services in some circumstances, interpretation of the section is unclear and law enforcement officers (including the Attorney General) have used section 158 of the Penal Code to initiate prosecution against medical providers.[23]

### *The policy context in Kenya*

Since the International Conference on Population and Development in Cairo in 1994, where governments embraced the idea of SRHR, Sub-Saharan Africa has made substantial progress toward the attainment of youth SRHR. Kenya has been a leader and developed the first adolescents' SRH policy in the region.[24] The Adolescent Reproductive Health and Development Policy of 2003 was grounded in fundamental human rights and freedoms and "adapted to the cultural and religious beliefs of the country."[25] The policy priority areas were addressing the high numbers of unsafe abortion and harmful practices (FGM and others), the continuous practical denial of reproductive rights recognized in Kenyan law, and the need to improve reproductive health information and services.[26] The policy document also identified NGOs as key stakeholders for success, as "watchdogs to ensure this policy is implemented at all levels of society."[27]

A 2013 Implementation Assessment Report showed the policy had achieved favorable results on the main indicators, but it acknowledged substantial implementation challenges remained.[28] To overcome these challenges and align with international agreements, a new Adolescent Sexual and Reproductive Policy was released in 2015, including the term "sexual" for the first time.[29]

Progressive norms can be linked to the positive trend in the official indicators. The use of family planning has improved from an unmet need of 27% in 2003 to an unmet need of 14% in 2022. Despite the general reduction, adolescents are the group facing the major unmet need in the last report of 2022, with 21.6% of them still not having their contraceptive needs met.[30] Notwithstanding that in certain counties FGM remains a majoritarian practice, the overall percentage of women undergoing FGM has dropped from 32.2% in 2003 to 15% in 2022.[31] NGOs also report positive results, from successful abortion litigation cases to promising attitudinal changes regarding FGM in underserved communities with high prevalence of FGM.[32]

Although formal progressive norms may seem well established, they can suddenly be replaced with regressive rules. For example, in 2022, the National Adolescent Sexual and Reproductive Health Policy was superseded by the National Reproductive Health Policy 2022-2032, which now serves as the primary reference document until a new adolescent specific policy is agreed.[33] The new policy is facing criticism because it requires parental consent for adolescents to access SRH services which places additional barriers for termination of pregnancy. The policy promotes sexual abstinence until the age of 21.[34] NGOs have sought court orders barring the implementation of the policy and seeking its review to ensure it aligns with constitutionally established rights.[35]

Therefore, the Kenyan legal and policy context has shown progressive SRHR achievements but there are challenges in maintaining this progress in formal norms, which can also affect measured indicators.

## The institutional work of NGOs as rights advocates

### *The challenges of implementing formal norms*

Institutions around SRH encompass not just formal rules and procedures—laws and policies—but also societal moral templates that guide people's actions.[36] Kenyan formal institutions are relatively well-defined, but informal institutions prevail and cause difficulties, especially in the community context where daily informal influence takes place linked to the relationships among family members, neighbors, school, and religious village leaders. An analysis of informal institutions is, therefore, important to understand the challenges in the attainment of adolescents' rights.

### *NGOs' roles within the distributed agency*

Formal and informal institutions are two intertwined elements of the complex societal arena, where many actors—from politicians to family members—advocate for their own interests.[37] In Kenya, multiple actors use influential tactics to create, maintain, or disrupt institutions surrounding SRHR. From government representatives to parents in rural villages, many stakeholders have an influence on the attainment of adolescents' rights.

The agency, that is, the power or the capacity of influence in this arena, is not owned by one actor but distributed among the many stakeholders that play a role in the achievement of youth SRHR. Adolescents are minors with limited agency and autonomy and as a result, their SRHR attainment depends on the actions of a wide range of individuals, often with different interests and opinions. NGOs are, therefore, navigating a complex arena with a clear distributed agency, a fact that poses additional difficulties to their advocacy work.

Among all those actors, NGOs focused on SRHR can be defined as a multi-level pro-rights advocate in general terms, with some exceptions. This essay argues that NGOs are a plural actor—an actor formed by many organizations that share a common final goal, but using different means and different arenas to advocate for it.[38] Because of their plurality, NGOs can influence both formal and informal institutions, working toward the common goal of promoting the attainment of SRHR.

It has been during the last three decades that NGOs have moved from exclusive service provision to a more comprehensive role that includes rights advocacy.[39] Today, in Kenya NGOs have three main roles when approaching the common goal of advocating for adolescents' SRHR in their SRHR work:

*Legal advocacy and litigation role*: aimed at influencing the interpretation of the SRHR that are set in the Kenyan Constitution and international treaties. The goal of NGOs is to obtain a better alignment of the national framework with the international formal one.

*Evidence generation and monitoring role*: aimed at generating evidence on the implementation of SRHR law and policy and evaluating the interaction between formal and informal norms.

*In-field education and awareness-raising role*: aimed at modifying informal institutions by increasing knowledge in the community. NGOs promote rights awareness and work to disrupt

harmful beliefs and regressive norms, facilitating an alignment between the formal norms and individuals' realities.

### *NGOs' work on formal institutions: Legal advocacy and litigation role*

NGOs with a legal advocacy and litigation role use both cooperation and confrontation to influence the judiciary and legislative power in the country. Their cooperation strategy includes releasing fact-sheets to the public, sending letters to international monitoring bodies, and organizing cross-country gatherings at international summits.

Their litigation work provides a confrontational strategy. NGOs choose possible landmark cases that can set progressive legal precedents at the national level and, in this way, effectively enforce adolescents' SRHR. Examples include the Center for Reproductive Rights (CRR) and the Kenya Legal and Ethical Issues Network (KELIN), NGOs that work to maintain and create institutions around safe abortion, combining collaboration and confrontation with positive results.

For example, in 2014, a 14-year-old girl became pregnant as a result of rape and, after being unable to access a safe abortion procedure, she had her pregnancy terminated by an unqualified provider and died from complications. CRR filed the Petition 266 of 2015 and the High Court at Nairobi, acknowledging article 26(4) of the Constitution, concluded that there had been a violation of the adolescent's right to access safe abortion, because of the threat to her mental health imposed by the rape.[40] The court further elaborated on state obligations under CEDAW and the Maputo Protocol. Kenya had made a reservation to Maputo Protocol article 14(2) regarding state obligations to protect women by authorizing medical abortion in cases of sexual assault and where the mental or physical health of the mother was in danger.[41] However, the court concluded that this reservation was not consistent with article 26(4) of the Constitution which states that abortion is permitted in case the life or health of the mother is in danger.[42] This case was a major victory for rape survivors, clarifying that abortion is permitted for victims of sexual violence.[43]

Earlier, in 2010, CRR and Reproductive Health Network Kenya filed the case *PAK and Salim Mohammed v. Attorney General et al.* before the High Court of Malindi. In this case, a pregnant teenage girl experienced pregnancy complications and went to a clinic where a healthcare professional performed a safe abortion procedure. Police officers stormed in the clinic and detained both the minor and the healthcare professional, charging them with receiving and procuring an abortion, contrary to the Penal Code.[44] In the ruling, the court quashed the criminal charges and proceedings and asked the legislature to draft a law that recognized a right to abortion in consonance with article 26(4) of the Constitution, declaring that "criminalizing abortion under the penal code without Constitutional statutory framework is an impairment to the enjoyment of women's reproductive rights."[45]

These two cases are currently at the Court of Appeal and both will most likely be presented before the Supreme Court due to the constitutional issues raised.[46] Notwithstanding this uncertainty, Kenya was the first African Court to pronounce abortion as a fundamental right in its ruling on Petition 266 of 2015.[47]

But NGOs' institutional work goes beyond maintenance and creation of new institutions and includes the disruption of existing regressive norms. In the case of Petition 27 of 2022, the National Reproductive Health Policy 2022-2032 has been challenged by KELIN before the High Court of Kenya at Kiambu.[48] KELIN claimed a procedural violation of the policy, arguing that there was a lack of effective and meaningful public participation in the development of the policy. KELIN also claimed a substantive violation of women's and adolescents' SRH, as the policy violates the right to health and the right to life provided in the Kenyan Constitution by establishing a requirement of parental consent for adolescents to access reproductive health services until the age of 21.[49] The procedural violation argued by the petitioners did not succeed. However, in the ruling delivered on 2 October 2025, the Court declared that paragraph 12 of clause 3.4.1 is

inconsistent with the right to life and the right to termination of pregnancy as set in the Constitution, which can be called a partial victory.[50]

This analysis shows that NGOs, together with judicial actors, are pushing for the realization of adolescents' rights as per international and national law. However, anti-abortion groups have also successfully pursued their agenda in some cases.[51] Therefore, progressive formal institutions cannot be considered secure and the work to maintain and improve those norms must continue.

### *NGOs' work on implementation: Evidence-generation and monitoring role*

Despite divergent opinions in Kenya regarding access to sexual and reproductive education, services, or commodities among youth, issues such as teenage pregnancy or HIV infection are widely recognized societal challenges that need to be confronted.[52] Kenya launched progressive policies to promote adolescents' SRH in 2003 and 2015, as well as programs to improve adolescents' public health.[53] However, implementation of these policies remains a challenge.[54]

NGOs help to address these issues through their evidence generation and monitoring role, which deepens an understanding of adolescents' circumstances and helps identify solutions. An example of this is the Solutions for Supporting Healthy Adolescents and Rights Protection (SHARP) project. Led by Health Action International and their collaborators, the project collects and presents evidence on adolescents' access to contraception and youth-friendly health centers based on information from the public, private, and faith-based sectors.[55] Their results identified an unmet need for contraception in 34.5% of sexually active unmarried adolescents, due to both lack of availability and high cost.[56] Similar results were found regarding access to youth-friendly health centers, with barriers in the availability, accessibility, and affordability of the commodities as well as in privacy. Half the private health facilities share information with adolescents' parents or with their school and faith leaders.[57] The SHARP project concluded that the main challenges were effectively disseminating policies and guidelines, allocating adequate budgets, developing and delivering trainings to healthcare workers, and strengthening monitoring.[58]

Abolishing FGM is a practical challenge which NGO knowledge generation can help address. As the Evidence to End FGM Research Programme showed, there is a correlation between belonging to certain ethnic or religious groups and undergoing the procedure, which reflects the weight of moral templates and religious beliefs. Informal norms are in conflict with the formal (legal) prohibition of FGM.[59] Tackling informal norms may be the key to success.

### *NGOs' work at the grassroots level: Awareness-raising role*

NGOs operating at the community level are moving away from an exclusive service-provision role and are introducing health rights in their strategies and discourse, aiming to align social beliefs with formally framed rights. Global organizations such as Doctors without Borders have embraced education and awareness-raising roles. In their Adolescents and Youth Population Project in Mombasa, they focus on educating youth and reducing stigma.[60]

A more recently founded NGO, Save a Girl Save a Generation, was established with the aim of promoting health as a human right.[61] In their Kuelekea Mabadaliko Program, a multidisciplinary team of healthcare professionals, social workers, and legal professionals inform and educate women on SRHR, focusing on FGM.[62] This program provides information and education twice a year to vulnerable women in communities where FGM practices are highly prevalent. The program is designed for target communities, where low literacy levels and strong social norms prevail. Their targeted approach is showing positive results, with an increase in the number of participants.[63] Their program is directed to women who have undergone an FGM procedure, aiming at transforming them into allies against FGM in their own community. Participants later participate in public events and advocate against FGM to protect their female children from suffering the same harmful practice they underwent.[64]

These two examples show how grassroot-focused NGOs have introduced health rights in their strategy and speech, aiming to align social beliefs with formally framed rights.

## Recommendations and conclusion

The progress that has occurred around adolescents' SRHR in the last decades in Kenya cannot be denied. In terms of formal norms, successful laws and policy plans have been set.[65] In terms of outcomes, the Kenya Demographic and Health Surveys show a decreasing trend in major national concerns such as FGM prevalence or the unmet need of family planning.[66] However, informal norms pose barriers to both political prioritization and policy implementation. Most African leaders have adhered to other development priorities.[67] While NGOs have, to some extent, influenced leaders to keep SRH on the policy agenda, national funding and efforts have proven insufficient. Conflicting power dynamics between different stakeholders at the national level—religious organizations, NGOs, political parties—pose obstacles when operationalizing international human rights and agreements.[68]

The legal cases explained above show the importance and success of NGOs' work as human rights advocates and their influence in Kenya, a pioneer country in terms of policies and laws within the region.[69] Pervasive social norms influence society at all levels, including African leaders; and that leads to a lack of priority and funding regarding SRH. In this process of moving from formal norms to implementation, NGOs have proven important allies, as they use their influential power to keep SRHR on the policy agenda and in the national budget.[70]

NGOs are key advocates of adolescents' rights. While community members and politicians lack consensus on a cohesive public positioning on SRHR and adolescents lack the political power to force high-level decision makers to act, NGOs persevere in promoting the international treaties at multiple levels in Kenya.[71] As outlined in the three categories of work, their role goes beyond formal legal advocacy and litigation into evidence-generation, education, and awareness-raising activities. Their holistic institutional work, plurality of strategies and progressive approach is much needed in an environment where anti-rights movements seem to be gaining agency, and where rooted pervasive informal institutions remain a challenge to progress.[72]

The contribution of NGOs has been crucial to promote and defend international treaties and SRHR in Kenya, while fostering national leaders' support toward rights-based law, policies, and implementation. The Kenyan government has obligations to fulfill the SRHR of its adolescent population and the work of NGOs can help them meet these obligations.

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71. E. Opondo, J. Maina, and N. Munyasia, "Lessons from Kenya on Sexual Reproductive Health and Rights Policy-Making: The Need to Centre Voices from Africa in Global Discourses," *Sexual and Reproductive Health Matters* 32/1 (2024).

72. *Rachael Mwikali & 3 Others v. The Cs, Ministry Of Health* (see note 35); WHO (see note 3).